UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	
v.	:	NO. 3:96cr139(AHN)
JOSE E. STROH	:	

RULING ON PENDING MOTIONS

On July 23, 1996, the Grand Jury returned a one-count indictment against Jose E. Stroh ("Stroh") and two Panamanian corporations that he controls, charging them with RICO conspiracy predicated on money laundering, in violation of 18 U.S.C. § 1962(d). Presently pending in this action are Stroh's motions (1) to dismiss the indictment on statute of limitations grounds [doc. # 19]; to dismiss the indictment for lack of personal jurisdiction [doc. # 40]; and (3) for a bill of particulars [doc. # 28 and doc. # 36].

BACKGROUND

Stroh is a citizen of Colombia and was residing outside of the United States at the time he was indicted. He remained a fugitive until January, 2000, when he was detained at the airport in Panama while en route to Costa Rico. He was expelled from Panama and was immediately transported by DEA agents to the United States without incident. Stroh did not appear in any Panamanian court and his requests to consult with a lawyer and Panamanian officials were ignored. There was no violence and he was not mistreated or abused.

THE INDICTMENT

The indictment charges that Stroh was involved in an extremely large-scale international money laundering conspiracy involving the proceeds generated from the sale of cocaine in the United States. His alleged co-conspirators are Szion Abenhaim ("Abenhaim"), David Vanounon, Adi Tal and Raymond Chochaia.

According to the indictment, Stroh, in partnership with Abenhaim, was a currency broker from May, 1986 to April, 1990. As such he arranged for the exchange of U.S. currency generated from the sale of cocaine in the U.S., for Colombian pesos. He received a commission on each currency transaction. As a broker, he negotiated the terms for the currency exchange with numerous intermediaries representing various factions of the Cali cartel who had control over the cash generated from drug trafficking in the U.S. To effectuate the currency exchanges, Stroh would provide the intermediaries with beeper numbers and code names of individuals in the U.S. to contact for pick up of the U.S. currency that had been received from the sale of cocaine. Stroh's coconspirators would then convert the cash to checks, money orders and wire transfers that could be transferred within and without the U.S. The transactions were structured in a way that would avoid the U.S. Treasury's currency reporting requirements for transactions exceeding $10,000.

To further their money laundering enterprise, Stroh caused

Nalvador, S.A. to be incorporated in Panama in May 1986. In May, 1987, he incorporated Palier Group, Inc., as a Panamanian corporation. These entities were shell corporations that were used to open bank accounts at Banco Cafetero and Banco de Occidente in Panama. Stroh then caused funds from the cocaine trafficking to be transferred to and through these corporations' bank accounts. This was done by purchasing official bank checks from numerous banks in Connecticut and elsewhere with cash from the drug sales. The checks, money orders and wire transfers were made out to one of the Panamanian corporations and were in amounts less than $10,000.

Stroh and his co conspirators also participated in money laundering activities in New York and New Jersey in 1987 through 1990. In 1990, one of his coconspirators caused fraudulent checks to be issued in exchange for more than $2,265,000 cash that had been received from the Cali cartel for laundering. The indictment alleges that as a result of this fraud, the enterprise lost $2,265,000 of Cali cartel funds. This caused Stroh to advise Abenhaim in or about April, 1990, that he "was leaving their partnership and was leaving to Abenhaim the responsibility for paying back to the Cali cartel" the $2,265,000 debt.

Thereafter, Abenhaim continued the money laundering conspiracy to pay off the $2,265,000 debt that he and Stroh had incurred to the Cali cartel. Specifically, Abenhaim arranged for

illegal wire transfers of the proceeds of drug trafficking on December 30, 1991, January 17, 1992, January 22, 1992, and July 13, 1992. The total amount of these wire transfers was $1,490,000.

DISCUSSION

Stroh moves to dismiss the indictment on the ground that it was not returned within the five-year limitation period of 18 U.S.C. § 1962(d). He also claims that the indictment must be dismissed because the manner in which the government obtained his presence in the United States violated due process and violated the extradition treaty between Panama and the United States.

A. Statute of Limitations

Stroh maintains that the five-year statute of limitations for a RICO conspiracy expired before the indictment was filed. His argument is based on the allegation in ¶ 46 of the indictment, which alleges that, as a result of losses incurred by the criminal enterprise, in or about April 1990, Stroh advised Abenhaim that he was "leaving their partnership and leaving to Abenhaim the responsibility for paying back to the Cali cartel the debt that was incurred for these losses." However, contrary to Stroh's arguments, this language is not a legal or factual allegation or concession that he withdrew from the conspiracy and that the indictment is time barred.

Withdrawal from a conspiracy requires more than just

"dropping out." See United States v. Juodakis, 834 F.2d 1099, 1102 (1st Cir. 1987) (noting that the law imposes stringent requirements for withdrawal and more affirmative action than just dropping out is required). To establish withdrawal, a defendant must prove that he communicated his abandonment in a manner reasonably calculated to reach the coconspirators and undertook some act that affirmatively established the disavowal of his criminal association with the conspiracy. See United States v. Diaz, 176 F.3d 52, 98 (2d Cir.), cert. denied 120 S. Ct. 314 (1999) (quoting United States v. Minicone, 960 F.2d 1099, 1108 (2d Cir. 1992)); see also United States v. Berger, 224 F.3d 107, 118-19 (2d Cir. 2000) (stating that resignation alone does not constitute withdrawal and that even if a defendant completely severs his ties with the enterprise, his acts which inadvertently helped to conceal the conspiracy from investigators is sufficient to establish a continuing link to the conspiracy); United States v. Sax, 39 F.3d 1380, 1386 (7th Cir. 1994) (noting that withdrawal from a conspiracy is easier to state than to achieve and that it requires an affirmative act on the part of the conspirator who must either make a full confession to the authorities or communicate to each of his coconspirators that he has abandoned the conspiracy and its goals). Moreover, for a withdrawal to be effective, the defendant must not receive any additional benefits from the conspiracy. See United States v.

Greenfield, 44 F.3d 1141, 1149-50 (2d Cir. 1995); United States v. Borelli, 336 F.2d 376, 388 (2d Cir. 1964).

Thus, even though the indictment alleges that Stroh told one of his coconspirators that he was leaving their partnership, this does not amount to a withdrawal from the alleged conspiracy. The indictment contains no allegation that Stroh took any affirmative act to establish the disavowal of his association with the conspiracy, or that he did not receive any future benefit from the conspiracy. It does not allege that Stroh made a full confession to authorities or that he communicated to each of his coconspirators that he had abandoned the conspiracy and its goals.

To the contrary, the indictment can reasonably and fairly be read as alleging that Stroh received a benefit from the acts of his coconspirators after he resigned from his partnership with Abenhaim. Specifically, the indictment alleges that, as part of the conspiracy and to further the affairs of the enterprise, Abenhaim continued to broker the exchange of currency in an effort to pay off the debt that Abenhaim and Stroh incurred in 1990, to the Cali cartel. This is a sufficient allegation of benefit to Stroh to charge him with the post-1990 acts of his coconspirators.[1] See United States v. Berger, 22 F. Supp.2d.

[1]This benefit to Stroh is not affected in any way by the fact that Abenhaim may have been motivated to repay the debt by fear of retribution from the cartel. Rather, the fact that Abenhaim was abducted and tortured by the cartel and threatened

145, 153 (S.D.N.Y. 1998), aff'd 224 F.3d 107 (2000) ("[i]n considering the sufficiency of an indictment, common sense must control and the indictment must be read to include facts which are necessarily implied by the specific allegations made") (citing United States v. Stavroulakis, 952 F.2d 686, 693 (2d Cir. 1992)).

The facial validity of the indictment is not affected by Stroh's claim that the government incorrectly alleges that he left the partnership for Israel in April 1990, instead of the correct date, April, 1988, and thus the alleged debt to the Cali cartel was incurred after his resignation.

The most obvious flaw in this argument is that the indictment does not, either actually or by implication, tie Stroh's departure for Israel to the date he told Abenhaim that he was leaving their partnership.[2] The indictment only alleges that in April, 1990, Stroh advised Abenhaim that he was leaving their

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with his life if the debt was not repaid is further evidence that Stroh received a benefit from Abenhaim's efforts to repay the debt--Abenhaim's efforts may have saved Stroh's life. At any event, the facts relating to Abenhaim's motives are irrelevant to whether his actions benefitted Stroh or whether the indictment sufficiently alleges such a benefit.

[2]The source of this canard is apparently a misstatement in the government's memorandum in opposition to Stroh's motion to dismiss. See Gov't Mem. Opp'n at 3, doc. # 22 ("The indictment alleges that as a result of the losses sustained by the Enterprise, Stroh advised his partner . . . Abenhaim, in April, 1990 that he was departing Colombia for Israel for one year."). This inaccurate statement of the indictment's allegations does not render the indictment time barred as a matter of law.

partnership and was leaving him with the responsibility for repaying the debt to the Cali cartel. The indictment does not allege, either expressly or impliedly, that Stroh resigned from his partnership with Abenhaim at the same time he left Colombia to spend a year in Israel. Indeed, there is no mention whatsoever in the indictment that Stroh left Colombia for Israel in either 1988 or 1990, or that any of his trips to Israel had any effect on the enterprise. Moreover, the government has never conceded that the indictment incorrectly alleges April, 1990, as the date Stroh told Abenhaim he was leaving their partnership, nor has it ever asserted that Stroh left the partnership before the Cali cartel debt was incurred.

Thus, it is of no consequence that the government now agrees that Stroh left Colombia to spend a year in Israel in April, 1988, not April 1990. Whether there is any legal or factual significance to the date he left Colombia for Israel is for the jury to determine in light of all the evidence in the case.

Another reason that the facially-valid indictment is not subject to dismissal on statute of limitations grounds is that the limitations period for a RICO conspiracy does not begin to run until its purposes are accomplished or abandoned. See United States v. Persico, 832 F.2d 705, 713 (2d Cir. 1987); United States v. Grammatikos, 633 F.2d 1013, 1023 (2d Cir. 1980)). Here, the indictment alleges that the conspiracy continued “from

in or about May 1986 through in or about July 1992." Thus, even if Stroh resigned from active participation in the partnership, the government is entitled to present evidence showing that the money-laundering conspiracy continued in existence until July, 1992. See United States v. Carson, 702 F.2d 351, 361 (2d Cir. 1983). Whether the alleged post-1990 conduct of Stroh's co-conspirators was reasonably foreseeable conduct that furthered the conspiracy and is thus attributable to Stroh is an issue that the jury must decide. See United States v. Salerno, 868 F.2d 524, 534 (2d Cir. 1989) (upholding conviction for RICO conspiracy on statute of limitations grounds even though indictment did not plead specific acts of coconspirator within the limitations period); United States v. Russell, 963 F.2d 1320, 1322 (10th Cir. 1992) (holding that a conspirator is liable for the conduct of his coconspirators that was in furtherance of the conspiracy and reasonably foreseeable as a necessary or natural consequence of the unlawful agreement) (citing Pinkerton v. United States, 328 U.S. 640, 647-48 (1946)).

In sum, determination of when a conspiracy ends requires scrutiny of all of the pertinent facts in each case, including the scope of the conspiratorial agreement. See United States v. Roshko, 969 F.2d 1, 7 (2d Cir. 1992); see also United States v. Juodakis, 834 F.2d 1099, 1103 (1st Cir. 1987) (noting that the district court was correct in not determining withdrawal as a

matter of law and in allowing the jury to decide whether the coconspirators' conduct that occurred 17 months after the defendant's withdrawal was in furtherance of the charged conspiracy for statute of limitations purposes).

Moreover, as the foregoing illustrates, it is far from clear that the facts relating to Stroh's resignation from the partnership with Abenhaim are separate and distinct from the facts relating to his guilt or innocence of the charged RICO conspiracy. Because the facts relating to Stroh's affirmative defenses of withdrawal and statute of limitations[3] are inevitably bound up with the evidence pertaining to the conspiracy itself, those issues can not be decided as a matter of law after a short fact-finding hearing. See United States v. Grimmett, 150 F.3d 958, 961-62 (8th Cir. 1998) (noting that a Rule 12(b) motion should be deferred until trial if the facts relating to the statute of limitations are inevitably bound up with the evidence about the alleged offense itself).

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[3] Although Stroh argues that the government must prove beyond a reasonable doubt that a defendant did not withdraw from a conspiracy once the defendant produces evidence of withdrawal, the court notes that the cases he relies on do not support his claim. See United States v. Goldberg, 401 F.2d 644 (2d Cir. 1968) (stating that "the burden of establishing an effective withdrawal from a conspiracy rests upon the defendant, and the mere cessation of activity in furtherance of the conspiracy is not sufficient to carry this burden and to start the running of the statute."). Moreover, in Berger, 2000 U.S. App. Lexis 22159 at *30, the court noted that "the burden of establishing withdrawal lies on the defendant." (quoting United States v. Borelli, 336 F.2d 376, 388 (2d Cir. 1964)).

Rather, these defenses will be decided by the jury on the basis of all of the evidence. See United States v. Diaz, 176 F.3d at 98 (holding that the issue of whether a defendant's incarceration establishes withdrawal from the conspiracy must be decided by the jury in light of all the evidence); United States v. Borelli, 336 F.2d 376 (2d Cir. 1964) (concluding that, although defendant had done nothing actively in furtherance of a conspiracy within five years of the indictment, this did not automatically establish withdrawal as a matter of law, but presented an issue for the jury to decide); United States v. Lev, 276 F.2d 605, 607 (2d Cir. 1960) (finding no error in the court's refusal to rule on issue of withdrawal as a matter of law and holding that evidence of withdrawal must be left for the jury to decide); see also Hyde v. United States, 225 U.S. 347, 369 (1912)(holding that it is for the jury to determine if the defendant took affirmative action to disavow or defeat the conspiracy and to assess his state of mind); United States v. Berger, 224 F.3d at 119 (rejecting the defendant's claim that he was entitled to a judgment of acquittal because his letter of resignation conclusively established that he ended his involvement in the charged criminal conduct more than five years before the indictment was filed, and holding that the issue was properly submitted to the jury).

For these reasons, Stroh's motion to dismiss the indictment

as time barred is denied.

B. Lack of Personal Jurisdiction

Stroh also moves to dismiss the indictment on the ground that the court lacks personal jurisdiction over him because the manner in which the government arrested him violated his substantive due process rights. Stroh maintains that the government acted unconscionably by abducting him from Panama when it had alternative, less drastic ways of obtaining his presence in this country to face the charges against him. He also claims that his arrest violates the Treaty Providing for the Extradition of Criminals, May 25, 1904, United States of America-Republic of Panama, 34 Stat. 2851 (the "Extradition Treaty"), because money laundering is not an extraditable crime under the Treaty. There is no merit to Stroh's claims.

First, the Supreme Court has held that a criminal defendant does not acquire a defense to the jurisdiction of this country's courts if he is abducted to the United States from a nation with which it has an extradition treaty. See United States v. Alvarez-Machain, 504 U.S. 655, 657 (1992). Indeed, the Supreme Court has never departed from the rule announced in Ker v. Illinois, 119 U.S. 436, 444 (1886), that the power of a court to try a person for a crime is not impaired by the fact that he had been brought within the court's jurisdiction by reason of a forcible abduction. See Frisbie v. Collins, 342 U.S. 519, 522

(1952); United States v. Noriega, 117 F.3d 1206, 1214 (11th Cir. 1997).

In addition, under Alvarez-Machain, "to prevail on an extradition treaty claim, a defendant must demonstrate, by reference to the express language of a treaty and/or the established practice thereunder, that the United States affirmatively agreed not to seize foreign nationals from the territory of its treaty partner." United States v. Noriega, 117 F.3d at 1214 (holding that the extradition treaty between the U.S. and Panama does not foreclose either country's ability to resort to self help and does not bar abductions). Stroh has not satisfied this burden.

Moreover, a violation of Stroh's constitutional rights by Panamanian officials would not give him grounds to challenge the jurisdiction of this court. Constitutional rights are generally inapplicable to the acts of foreign sovereigns in their own territory in enforcing their own laws, even if American officials are present and participate to some degree. See United States v. Rosenthal, 793 F.2d 1214, 1230 (11th Cir. 1986); United States v. Toscanino, 500 F.2d 267, 281 n.9 (2d Cir. 1974) (noting that the Constitution applies only to conduct abroad of agents acting on behalf of the United States and does not govern the independent conduct of foreign officials in their own country). Here, Stroh was detained by Panamanian officials who expelled him from their

country and turned him over to the United States. He does not have any constitutional challenge to the acts of the Panamanian officials.

Finally, Stroh does not allege any deliberate, unnecessary and unreasonable invasion of his constitutional rights that could possibly bring his case within the purview of United States v. Toscanino, 500 F.2d at 267. In that case, the Second Circuit held that the defendant's due process rights were violated, and the court was divested of jurisdiction, where, in violation of an international treaty, agents of a foreign government, acting as agents of the U.S., kidnaped the defendant, brutally tortured him, and flew him to the United States in a drugged state. Here, unlike Toscanino, Stroh does not claim that he suffered any cruel, inhuman or outrageous treatment and his arrest does not support a due process claim. See United States v. Noriega, 117 F.3d at 1214; United States v. Gengler, 510 F.2d 62 (2d Cir. 1975).

In conclusion, the fact that Stroh was removed from Panama even though there may have been alternative, less drastic means of obtaining his presence in this country does not divest this court of jurisdiction. Indeed, the totality of the circumstances surrounding Stroh's arrest, even assuming that he was abducted and that the government could have obtained his presence through extradition or by issuing him a visa, does not

shock the conscience or constitute a violation of due process. Stroh does not cite any authority to the contrary.

C. Motion for Bill of Particulars

Stroh also moves for a bill of particulars asking the government to identify and describe the acts on which the government will rely to establish the conspiracy, his role in the conspiracy, all acts attributable to him after April 1990, and any benefits he received from the conspiracy after 1988 or 1990.

The granting or denial of a bill of particulars rests within the sound discretion of the court. See United States v. Bortnovsky, 820 F.2d 572, 574 (2d Cir. 1987). In exercising this discretion, the court should consider whether the requested disclosures are necessary to enable the defendant to prepare for trial and avoid unfair surprise at trial, see United States v. DeFabritus, 605 F. Supp. 1538, 1547-48 (S.D.N.Y. 1985), whether the request for a bill of particulars would unduly restrict the government's ability to present its case, see id. at 1548, and whether the information sought has been or could be obtained through discovery, see United States v. Young & Rubicam, Inc., 741 F. Supp. 334, 349 (D. Conn. 1990). In general, a bill of particulars is required only "where the charges of the indictment are so general that they do not advise the defendant of the specific acts of which he is accused." United States v. Walsh, 194 F.3d 37, 46 (2d Cir. 1999).

A bill of particulars is not a general investigative tool for the defense or a device to compel disclosure of the government's evidence or legal theory before trial. See United States v. Torres, 901 F.2d 205, 234 (2d Cir. 1990). "It is not enough that the information would be useful to the defendant; if the defendant has been given adequate notice of the charges against him, the government need not be required to disclose additional details about its case." United States v. DeFabritus, 605 F. Supp. at 1548.

Here, the indictment sufficiently apprises Stroh of the nature of the charges against him. It states with particularity the nature of the racketeering enterprise, its purposes and objects, its structure, the roles of the known conspirators and specific acts and the manner in which they relate to the purposes of the conspiracy.

CONCLUSION

For the foregoing reasons, Stroh's motions to dismiss the indictment [doc. # 19 and doc. # 40] are DENIED. Stroh's motion for a bill of particulars [doc. # 19 and doc. # 38] is also DENIED.

SO ORDERED this day of November, 2000, at Bridgeport, Connecticut.

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Alan H. Nevas
United States District Judge